

VIATICAL AND LIFE SETTLEMENTS  
CHAPTER 48  
VIATICAL AND LIFE SETTLEMENTS

**191—48.1(508E) Purpose and authority.** The purpose of this chapter is to provide for the administration of viatical and life settlements in this state by providing rules under which viatical and life settlements may be made, disclosures and other provisions by which viators may be protected, and safeguards by which viatical settlement providers may be monitored and remain in good standing. These rules are adopted by the commissioner pursuant to the authority in Iowa Code chapter 508E.

**191—48.2(508E) Definitions.**

*“Advertising”* means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract.

*“Business character report”* means a statement certified by an independent third party which has conducted a comprehensive review of the applicant’s background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner.

*“Business of viatical settlements”* means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts or viatical settlement investment contracts.

*“Escrow agent”* means an individual or institution that has established an escrow or trust account with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established for use by a viatical settlement provider or viatical settlement purchaser.

*“Financing entity”* means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:

1. Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
2. Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

*“Financing entity”* does not include a nonaccredited investor or viatical settlement purchaser.

*“Life settlement”* means a viatical settlement in which the viator has not been diagnosed as terminally or chronically ill. For purposes of these rules, unless otherwise distinguished, the term “life settlement” shall be synonymous with viatical settlement.

*“Person”* means a natural person or a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.

*“Policy”* means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

*“Related provider trust”* means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement

provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

“*Special purpose entity*” means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed viatical settlement provider.

“*Viatical settlement broker*” means a person that, on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best interest of the viator. The term does not include an attorney, a certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

“*Viatical settlement contract*” means a written agreement establishing the terms under which compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, will be paid to the viator in return for the viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to provide for lump sum settlements or annuities pursuant to subrule 48.9(16) only, such settlements to be made at the time of assignment. “*Viatical settlement contract*” does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator’s life.

“*Viatical settlement investment agent*” means a person who solicits or arranges for the purchase of a viatical settlement investment contract by a viatical settlement purchaser and who is acting on behalf of an issuer as defined in Iowa Code chapter 502.

“*Viatical settlement investment contract*” means a contract or agreement that is entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy and that is entered into for the purpose of deriving an economic benefit. A viatical settlement investment contract is a security under Iowa Code chapter 502.

“*Viatical settlement provider*” means a person other than a viator that enters into or effectuates a viatical settlement contract. A viatical settlement provider may be an issuer of securities requiring registration of the viatical settlement investment contract pursuant to Iowa Code chapter 502. “*Viatical settlement provider*” does not include:

1. A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
2. The issuer of a life insurance policy providing accelerated benefits;
3. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, special purpose entity or related provider trust;
4. A financing entity;
5. A special purpose entity;
6. A related provider trust;
7. A viatical settlement purchaser; or
8. An institutional buyer as defined in rule 191— 50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, and who purchases a viaticated policy from a viatical settlement provider. An institutional buyer under rule 191—50.46(502) shall include an accredited investor.

“*Viatical settlement purchaser*” means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns

or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. “Viatical settlement purchaser” does not include:

1. A viatical settlement provider or viatical settlement broker licensed and acting under these rules; or

2. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933. An institutional buyer under rule 191—50.46(502) shall include an accredited investor.

“*Viaticated policy*” means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

“*Viator*” means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract to sell the life insurance policy or certificate. For the purposes of these rules, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. “Viator” does not include:

1. A viatical settlement provider or viatical settlement broker as defined in this rule.

2. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, and who purchases a viaticated policy from a viatical settlement provider. An institutional buyer under rule 191—50.46(502) shall include an accredited investor, as long as such accredited investor is not the named insured or owner of the policy to be viaticated.

3. A financing entity.

4. A special purpose entity.

5. A related provider trust.

#### **191—48.3(508E) License requirements.**

**48.3(1) Viatical settlement provider.** A person shall not operate as a viatical settlement provider without first obtaining a license from the commissioner of the state of residence of the viator.

a. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of \$100 and the costs of an initial examination, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(1) Has provided a detailed plan of operation, which includes details of the proposed operation in this state;

(2) Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement provider;

(3) Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement provider;

(4) If a legal entity, has provided proof of licensure and a certificate of good standing from the state of its domicile;

(5) Has provided either:

1. A copy of the current year’s audited financial statement, and a copy of audited financial statements for each of the previous five years; or

2. At the commissioner’s discretion, a copy of the current year’s consolidated annual audited financial statement with a financial guarantee from the provider’s ultimate controlling person, and unaudited financial statements from the provider for the current year and each of the previous five years;

(6) Maintains books and records in compliance with generally accepted accounting principles;

(7) Has provided proof of a fidelity bond on each officer and director in the amount of \$100,000 issued by an insurance carrier rated with one of the four highest categories by A.M. Best, or a comparable rating by another rating agency;

(8) Has provided business character reports for the following: officers and directors (as listed on the most recent financial statement), key managerial personnel (including any vice presidents or other

individuals who will control the operations of the applicant), and individuals with a 10 percent or more beneficial ownership in the applicant who will exercise control over the applicant;

(9) Has provided the initial viatical settlement contracts and disclosure statements for approval and such contracts and statements have been approved;

(10) Has provided information regarding the identity of the escrow agent to be used; and

(11) Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement provider in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses.

b. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this rule.

c. In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider complies with the requirements of this subrule.

**48.3(2) Viatical settlement broker.** Effective July 1, 2002, a person shall not operate as a viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. Upon the filing of an application in the format prescribed by the commissioner and the payment of an application fee in the amount of \$100, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

a. Has passed the test required by the commissioner or has taken and passed a test on viatical and life settlement contracts required by another state insurance department;

b. Is competent and trustworthy and intends to act in good faith in the capacity of viatical settlement broker;

c. Has a good business reputation and has had experience, training or education so as to be qualified in the business of a viatical settlement broker;

d. Has provided a report of any civil, criminal or administrative actions taken or pending against the viatical settlement broker in any state or federal court or agency, regardless of outcome, excluding misdemeanor traffic citations and juvenile offenses; and

e. Has provided proof that the applicant is covered by an errors and omissions policy for an amount of not less than \$100,000 liability per occurrence and not less than \$100,000 total annual aggregate for all claims during the policy period.

In addition to the information required in this subrule, the commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement broker complies with the requirements of this subrule.

**48.3(3) Governing law where viators are residents of different states.** For purposes of this subrule, if there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. If another state does not have a substantially similar statute or rule to Iowa Code chapter 508E and this rule, the actions related to the viatical settlement contract shall be governed by the law of this state.

**48.3(4) Commissioner to be used for service of process.** The commissioner shall not issue a license to an applicant unless either a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

**48.3(5) License term.**

a. A viatical settlement provider or viatical settlement broker who meets the requirements of this rule, unless otherwise denied licensure pursuant to rule 48.12(508E), shall be issued a license.

b. A viatical settlement provider license is valid for one year and automatically terminates on March 31 of the renewal year unless renewed pursuant to subrule 48.3(6).

c. A viatical settlement broker license is valid for three years and automatically terminates on March 31 of the renewal year unless renewed pursuant to subrule 48.3(6).

d. A viatical settlement provider license or a viatical settlement broker license may remain in effect for the term of the license, unless revoked or suspended, as long as all required fees are paid in the time prescribed by the commissioner.

e. The license issued to a viatical settlement provider or viatical settlement broker shall be a limited license that allows the licensee to operate only within the scope of its license.

**48.3(6) Continuing education for viatical settlement broker.**

a. A viatical settlement broker licensed as a viatical settlement broker shall complete 36 credits of approved continuing education during each license term as set forth in paragraph 48.3(5) "c." Viatical settlement broker continuing education courses will be approved in the same manner that insurance continuing education courses are approved pursuant to 191—Chapter 11. A viatical settlement broker who successfully completes the examination for a viatical settlement broker license will be deemed to have completed sufficient continuing education for the license term in which the viatical settlement broker completed the examination.

b. The required continuing education credits shall include a minimum of:

- (1) Eighteen credits in life insurance;
- (2) Fifteen credits in viaticals; and
- (3) Three credits in ethics.

c. The viatical settlement broker may submit the same completed credits to the division both to meet continuing education requirements for the viatical settlement broker license and to meet the continuing education requirements for an applicable insurance producer license.

d. The license of a viatical settlement broker who fails to comply with this continuing education requirement shall terminate.

e. An instructor of an approved continuing education course shall be granted the same credit as a student who completes the continuing education course, and the instructor may receive such credit once during a license term.

f. A viatical settlement broker cannot carry over from one license term to the next continuing education credits earned in excess of the viatical settlement broker's license term requirements.

g. A viatical settlement broker may receive continuing education credit for self-study courses. A self-study course is considered completed when the continuing education provider receives the completed examination from the viatical settlement broker.

(1) A viatical settlement broker may receive continuing education credit for self-study courses that are part of a recognized national designation program as described in 191—subrule 11.5(5).

(2) A viatical settlement broker may receive continuing education credits for self-study courses that do not meet the requirement of subparagraph (1) if the viatical settlement broker:

1. Submits an affidavit to the continuing education provider that the examination was independently proctored and was completed without any outside assistance, and
2. Correctly answers at least 70 percent of the questions presented.

h. A viatical settlement broker shall not receive continuing education credit for courses taken prior to the issuance of an initial license.

i. A viatical settlement broker cannot receive continuing education credit for the same course twice in one license term. A viatical settlement broker cannot receive continuing education credit both for the classroom portion and for the examination portion of a national designation program as defined in 191—subrule 11.5(5).

j. A viatical settlement broker may elect to comply with the continuing education requirements by taking and passing the viatical settlement broker licensing examination.

k. A viatical settlement broker shall demonstrate compliance with the continuing education requirements at the time of license renewal. A viatical settlement broker shall maintain a record of

all continuing education courses completed by keeping the original certificates of completion for four years after the end of the year of course completion.

*l.* For purposes of rule 191—48.3(508E), “credit” means continuing education credit. One credit is 50 minutes of instruction or reading material in an acceptable topic.

**48.3(7) License renewal.** A viatical settlement provider license or a viatical settlement broker license may be renewed as follows:

*a.* A viatical settlement provider license may be renewed by payment of \$100 within the time prescribed by the commissioner and by demonstration that the viatical settlement provider continues to meet the requirements of subrule 48.3(1) and has provided the reports required by rule 48.6(508E). If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for one year, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to this subrule.

*b.* A viatical settlement broker license may be renewed by demonstration of completion of continuing education as required in subrule 48.3(6) and payment of \$100. If renewal is approved, the license will be renewed effective March 31 of the renewal year, will be valid for three years, and will automatically terminate on March 31 of the following renewal year unless renewed pursuant to subrule 48.3(7).

*c.* If a viatical settlement provider or viatical settlement broker fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails either to meet the requirements of subrule 48.3(1) or to submit the reports required in rule 48.6(508E), such nonpayment or failure shall result in lapse of the license.

*d.* A licensed viatical settlement broker who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request from the commissioner a waiver of renewal procedures. Such viatical settlement broker may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

**48.3(8) Duty to notify commissioner of cessation of business in the state.** If a viatical settlement provider intends to cease business in Iowa, it must notify the commissioner of those intentions and of its plan of operation for such cessation at least 180 days before the cessation shall occur. This requirement ensures that servicing of the viatical settlement investment contracts continues and all current business can be completed. This requirement is not meant to imply that a company must continue to accept new viatical or life settlement business during the 180-day period.

**48.3(9) Duty to notify commissioner of changes.**

*a.* A viatical settlement provider shall provide to the commissioner any new or revised information about officers, stockholders holding 10 percent or more of the stock of the company, partners, directors, members or designated employees within 30 days of the date the addition or revision occurred.

*b.* A viatical settlement provider or viatical settlement broker shall inform the commissioner in writing of any change of name or address within 30 days of the date of such change. In addition, a viatical settlement provider shall provide the commissioner with 30 days’ notice of the cancellation or nonrenewal of a fidelity bond required for licensure under subrule 48.3(1) and the name of the carrier that will be providing coverage subsequent to such cancellation or nonrenewal.

*c.* A viatical settlement provider or viatical settlement broker shall report to the commissioner any administrative action taken against the viatical settlement provider or viatical settlement broker in another state or federal jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, or other relevant legal documents. Within 30 days of the initial pretrial hearing date, a viatical settlement provider or viatical settlement broker shall report to the commissioner any criminal prosecution of the viatical settlement provider or viatical settlement broker taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

**48.3(10) Commissioner may use outside assistance.** In order to assist with the commissioner’s duties, the commissioner may contract with a nongovernmental entity, including, but not limited to,

the National Association of Insurance Commissioners (NAIC) or any affiliate or subsidiary the NAIC oversees, to perform any ministerial functions related to licensing of viatical settlement providers or viatical settlement brokers that the commissioner deems appropriate including, but not limited to, the collection of fees.

**191—48.4(508E) Approval of viatical settlement contracts and disclosure statements.**

**48.4(1)** A viatical settlement provider or viatical settlement broker shall not use a viatical settlement application, a viatical settlement contract or a viatical settlement disclosure statement form in this state unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement form or disclosure statement if, in the commissioner's opinion, the provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

**48.4(2)** The initial viatical settlement contracts and disclosure statements shall be filed for approval with the viatical settlement provider's application for licensure, as required under subparagraph 48.3(1) "a"(9). A distinct form number shall be assigned to each viatical settlement form the provider will be using.

**48.4(3)** If a viatical settlement provider enters into a viatical settlement contract that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following:

*a.* A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated and that benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;

*b.* A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:

(1) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

(2) Send to the insured a copy of the document(s) sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and

*c.* A provision that apportions the premiums to be paid by the viatical settlement provider and the viator. It is permissible for the viatical settlement contract to specify that all premiums shall be paid by the viatical settlement provider. The viatical settlement contract also may require that the viator reimburse the viatical settlement provider only for the premiums attributable to the retained interest.

**48.4(4)** In order to ensure that viators receive a reasonable return for viaticating an insurance policy when life expectancy is less than 25 months, a viatical settlement provider shall pay to a viator a discounted amount of the face value of the policy which amount shall be calculated at least at the following rates:

<u>Insured's Life Expectancy</u>	<u>Minimum Percentage of Face Value Less Outstanding Loans Received by Viator</u>
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 25 months	60%
25 months or more	Cash surrender value of policy

The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

For a viatical settlement in which the viator has a life expectancy of 25 months or more, a viatical settlement provider or broker shall not enter into a viatical settlement contract that provides a payment to the viator that is unreasonable or unjust. As listed above, such payment must at least be equal to

the cash surrender value of the policy. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the insured; the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups; and prevailing discount rates in the viatical and life settlement market in Iowa or, if insufficient data is available for Iowa, the prevailing rates nationally or in other states that maintain this data.

**48.4(5)** If a viatical settlement provider subsequently desires to change the viatical settlement contract documents or disclosure statements approved at the time of licensure, the provider shall submit the modified contract documents or disclosure statements to the commissioner for approval in triplicate, along with a postage-paid return envelope. The viatical settlement provider shall identify its name and address in the cover letter and also reference the form number of the modified viatical settlement contract document or disclosure statement. Black-lining the modifications made within the document(s) should expedite the form review and approval process.

**191—48.5(508E) Disclosures.**

**48.5(1)** With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by the viator and the viatical settlement broker. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

*a.* There are possible alternatives to a viatical settlement contract including any accelerated death benefits or policy loans offered under the prospective viator's life insurance policy;

*b.* Some or all of the proceeds of the viatical settlement contract may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax adviser;

*c.* Proceeds of the viatical settlement contract could be subject to the claims of creditors;

*d.* Receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

*e.* The viator has the right to rescind a viatical settlement contract for 15 calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in subrule 48.9(10), and, if the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or viatical settlement purchaser;

*f.* Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

*g.* Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator, and assistance should be sought from a financial adviser;

*h.* When entering into a viatical settlement contract, having a recent physical exam is in the viator's best interest, since an accurate life expectancy can only be predicted based on current medical records;

*i.* Disclosure to a viator and insured shall include distribution of the NAIC's most current form of brochure describing the process of viatical or life settlements, or such other form approved by the commissioner;

*j.* The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase."; and

*k.* The insured may be contacted by either the viatical settlement provider or viatical settlement broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once per year if the insured has a life expectancy of more than two years, once every three months if the insured has a life expectancy of more than one year but less than two years, and no more than once per month if the insured has a life expectancy of one year or less.

**48.5(2)** A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, and provide the following information:

*a.* The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

*b.* The name, address and telephone number of the viatical settlement provider;

*c.* The amount and method of calculating the broker's compensation, including anything of value paid or given to a viatical settlement broker for the placement of a policy;

*d.* If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

*e.* The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits; and

*f.* The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

**48.5(3)** If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured in writing by certified mail within 20 days after the change.

**48.5(4)** If the viatical settlement provider is an issuer of securities under Iowa Code chapter 502, the disclosure document shall meet the requirements of rule 191—50.122(502).

**48.5(5)** If the viator is not the insured, then these disclosures must be affirmatively made to the insured, as well as the viator, and written consent to the viatication must be received from both parties.

#### **191—48.6(508E) Reporting requirements.**

**48.6(1)** On March 1 of each calendar year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall make a report under oath of all viatical settlement transactions in which the viator is a resident of this state and for all states in the aggregate that contains the following information for the previous calendar year:

*a.* For viatical settlements contracted during the reporting period:

(1) Date of viatical settlement contract;

(2) Viator's state of residence at the time of the contract;

(3) Mean life expectancy, in months, of the insured at time of contract;

(4) Face amount of policy viaticated;

(5) Net death benefit viaticated;

(6) Estimated total premiums to keep policy in force for mean life expectancy;

(7) Net amount paid to viator;

(8) Source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market);

(9) Type of coverage (I-Individual; G-Group);

(10) Within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);

(11) If the insured is diagnosed as terminally or chronically ill, the general disease classification applicable to such insured; and

- (12) Type of funding (I-Institutional; P-Private).
- b.* For viatical settlements in which death of the insured has occurred during the reporting period:
- (1) Date of viatical settlement contract;
  - (2) Viator's state of residence at the time of the contract;
  - (3) Mean life expectancy, in months, of the insured at time of contract;
  - (4) Net death benefit collected;
  - (5) Total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);
  - (6) Net amount paid to viator;
  - (7) If the insured was diagnosed as terminally or chronically ill, the general disease classification applicable to such insured;
  - (8) Date of death of insured;
  - (9) Amount of time, in months, between date of contract and date of death of insured;
  - (10) Difference between the number of months that passed between the date of contract and the date of death of insured and the mean life expectancy in months as determined by the reporting company;
- c.* Name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;
- d.* Number of policies reviewed and rejected; and
- e.* Number of policies purchased from persons other than a viator (on the secondary market) as a percentage of total policies purchased.

**48.6(2)** On or before March 1 of each year, the secretary and either the president or the vice president of each viatical settlement provider licensed in this state shall make a report under oath of the following or shall provide the following documentation:

- a.* That the viatical settlement provider has at all times maintained books and records in compliance with generally accepted accounting principles;
- b.* That the viatical settlement provider has obtained and furnished to the commissioner either:
  - (1) A copy of the current year's audited financial statement; or
  - (2) At the commissioner's discretion, a copy of the current year's consolidated annual audited financial statement with a financial guarantee from the provider's ultimate controlling person; and
- c.* That the viatical settlement provider has maintained fidelity bonds on each officer and director in the amount of \$100,000.

**191—48.7(508E) Privacy.** Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, viatical settlement investment agent, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure:

1. Is necessary to effect a viatical settlement contract between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
2. Is necessary to effect a viatical settlement investment contract between the viatical settlement purchaser and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
3. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of rules 48.8(508E) and 48.11(508E);
4. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;
5. Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
6. Is necessary to allow the viatical settlement provider or viatical settlement broker or the provider's or broker's authorized representatives to make contacts for the purpose of determining health status; or
7. Is required to purchase stop-loss coverage.

**191—48.8(508E) Examination or investigations.****48.8(1) Authority, scope and scheduling of examinations.**

a. The commissioner may conduct an examination of a viatical settlement provider or viatical settlement broker as often as the commissioner deems appropriate.

b. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the viatical settlement provider or viatical settlement broker.

c. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

d. In lieu of an examination of any foreign or alien viatical settlement provider or viatical settlement broker licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the viatical settlement provider or viatical settlement broker as prepared by the commissioner for the viatical settlement provider's or viatical settlement broker's state of domicile or port-of-entry state.

e. The provisions of Iowa Code chapter 507 shall apply to viatical settlement providers and viatical settlement brokers. The commissioner shall examine the affairs, transactions, accounts, records and assets of each viatical settlement provider as often as the commissioner deems advisable. The expense of such examination shall be assessed against the viatical settlement provider in the same manner as insurers are assessed for examinations.

f. Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to this subrule.

**48.8(2) Record retention requirements.**

a. Executed documents. A person required to be licensed by these rules shall retain copies of all of the following records until the earlier of five years after the death of the viator or until completion of an examination following the death of the viator:

(1) Executed viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications from the date of the execution of the viatical settlement contract or viatical settlement investment contract, whichever is later; and

(2) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of viatical settlement contract funds from the date of the transaction; and

(3) All other records and documents related to the requirements of this rule.

b. Unexecuted documents. A person required to be licensed by these rules shall retain copies of all of the following records for one year: viatical settlement contracts, viatical settlement investment contracts, underwriting documents, policy forms, and applications that were proposed but not accepted by a potential viator, from the date of the proposed viatical settlement contract or viatical settlement investment contract, whichever is later.

c. This subrule does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.

d. Records required to be retained by this subrule must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

**48.8(3) Immunity from liability.** No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this rule or of Iowa Code chapter 508E.

**191—48.9(508E) Requirements and prohibitions.**

**48.9(1)** A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or have knowledge of the identity of the viator.

**48.9(2)** A viatical settlement investment agent is deemed to represent the viatical settlement provider with whom the viatical settlement investment agent is appointed or contracted.

**48.9(3)** Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

**48.9(4)** Before entering into a viatical settlement contract, a viatical settlement provider shall obtain:

*a.* If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

*b.* A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, a viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

**48.9(5)** Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subrule 48.9(6).

**48.9(6)** The viatical settlement provider shall deliver a copy of the medical release required under paragraph 48.9(4) "b," a copy of the viator's application for the viatical settlement contract, the notice required under subrule 48.9(5) and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The NAIC's form for verification shall be used unless standards for verification are developed by the commissioner.

**48.9(7)** The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

**48.9(8)** Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, represents that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons who are chronically ill or terminally ill under the definitions of Iowa Code sections 508E.2(1) and (3), acknowledges that the insured is chronically ill or terminally ill and that the chronic or terminal illness or condition was diagnosed after the life insurance policy was issued.

**48.9(9)** All medical information solicited or obtained by any viatical settlement provider or viatical settlement broker shall be subject to the provisions of 191—Chapter 90, which governs the confidentiality of medical information.

**48.9(10)** All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the viatical settlement contract for at least 15 calendar days from the receipt of the viatical settlement contract proceeds. If the insured dies during the viatical settlement contract rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or viatical settlement purchaser of all viatical settlement contract proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement purchaser.

**48.9(11)** The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary of the insurance policy or certificate directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical settlement provider shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account established with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow

account has been established by a viatical settlement provider or viatical settlement purchaser. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider within three business days. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator within three business days.

**48.9(12)** Failure to tender consideration to the viator for the viatical settlement contract within the time required by subrule 48.9(11) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

**48.9(13)** Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or the provider's or broker's authorized representatives and shall be limited to once per year if the insured has a life expectancy of more than two years, once every three months for an insured with a life expectancy of more than one year, and no more than once per month for an insured with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subrule shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

**48.9(14)** With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a beneficiary, to the estate of the viator.

**48.9(15)** Payment by the escrow agent of the proceeds of a viatical settlement contract shall be by means of wire transfer to the account of the viator or by certified check or cashier's check.

**48.9(16)** Payment of the proceeds to the viator pursuant to a viatical settlement contract shall be made in a lump sum except where the viatical settlement provider has purchased a single-premium paid-up annuity issued by a licensed insurance company to the viator. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

**48.9(17)** A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall not provide identifying information about either the insured or the viator to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to subrule 48.5(1) and rule 48.7(508E) or if such release is necessary to report suspected fraudulent viatical settlement acts pursuant to subrule 48.11(4).

**48.9(18)** A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall obtain from a person that is provided with identifying information about either the insured or the viator a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured or the viator for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, viatical settlement broker or viatical settlement investment agent is served with a subpoena and thereby compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last-known addresses within five business days after receiving notice of the subpoena.

**48.9(19)** A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, related to the same viatical settlement contract.

**48.9(20)** A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

**48.9(21)** A viatical settlement provider shall not use a longer life expectancy than is reasonable based on all medical and actuarial information available at the time of a viatical settlement transaction in order to reduce the payout to which the viator is entitled.

**48.9(22)** A viatical settlement provider or viatical settlement broker shall not discriminate in the making or solicitation of viatical settlement contracts on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with or without dependents.

**48.9(23)** A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to an insured or viator, or to any other person acting as an agent of an insured or viator with respect to a viatical settlement contract.

**48.9(24)** A viatical settlement provider shall not knowingly solicit individuals who have treated or have been asked to treat the illness of an insured whose coverage would be the subject of a viatical settlement contract.

**48.9(25)** A viatical settlement provider shall not structure a viatical settlement investment contract in a manner which requires an insurer to keep track of more than ten beneficiaries for each insurance contract being viaticated.

**48.9(26)** Viatical settlement contracts entered into within the first two years of issuance of insurance.

*a.* A person shall not enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(2) The viator is a charitable organization exempt from taxation under 26 U.S.C. §501(c)(3);

(3) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

1. The viator or insured is terminally ill or chronically ill, as defined in Iowa Code section 508E.2(1) or (3);

2. The viator's spouse dies;

3. The viator divorces the viator's spouse;

4. The viator retires from full-time employment;

5. The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

6. The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

7. A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;

8. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

9. The viator or insured disposes of ownership interests in a closely held corporation.

*b.* Copies of the independent evidence described in this subrule and documents required by subrule 48.9(6) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

**48.9(27)** If a viatical settlement broker performs any of the activities required of the viatical settlement provider by this rule, the viatical settlement provider is deemed to have fulfilled the requirements of this rule.

**48.9(28)** Insurance company practices.

*a.* Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within 30 calendar days of the date a request is received, including the insurer's intent to pursue an additional investigation regarding possible fraud or the validity of the insurance contract, subject to the following conditions:

(1) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;

(2) In the case of an individual policy, submission of a form substantially similar to the NAIC's most current form describing verification of coverage for individual policies, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form;

(3) In the case of group insurance coverage, submission of a form substantially similar to the NAIC's most current form describing verification of group life insurance benefits,

1. Which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form, and

2. Which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

*b.* Nothing in this subrule shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

*c.* A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this subrule in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

*d.* The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner(s) or certificate holder(s) and, in cases in which the policyowner or certificate holder is other than the insured, to the insured. The acknowledgment may contain a description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract and said acknowledgment may compare the benefits of accelerating the death benefits to the viatication of the policy.

*e.* If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subrule 48.9(8) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this subrule and the insurer shall timely respond to the request.

#### **191—48.10(508E) Advertising for viatical settlements.**

**48.10(1)** The purpose of this rule is to ensure that prospective viators are provided with clear and unambiguous statements in the advertisement of viatical settlements and to ensure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to ensure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentations and descriptions of viatical settlements through the advertising media and material used by viatical settlement providers or viatical settlement brokers. A viatical settlement investment contract is a "security" as set forth in Iowa Code section 502.102(19); therefore, the advertising requirements of rule 191—50.120(502) are applicable.

**48.10(2)** This rule shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this subrule shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

**48.10(3)** Every viatical settlement provider or viatical settlement broker shall establish and at all times maintain a system of control over the content, form and method of dissemination of all

advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement provider or viatical settlement broker. A system of control shall include regular routine notification, at least once per year, to agents and others authorized by the viatical settlement provider or viatical settlement broker who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement provider or viatical settlement broker.

**48.10(4)** An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. An advertisement shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

**48.10(5)** The information required to be disclosed under this rule shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

**48.10(6)** An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving prospective viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a “free look” period that satisfies or exceeds legal requirements does not remedy misleading statements.

**48.10(7)** An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

**48.10(8)** An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

**48.10(9)** The words “free,” “no cost,” “without cost,” “no additional cost,” “at no extra cost,” or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

**48.10(10)** Testimonials, appraisals or analysis used in advertisements must: be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement provider or viatical settlement broker makes as its own all the statements contained therein, and the statements are subject to all the provisions of this subrule.

*a.* If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

*b.* An advertisement shall not state or imply that a viatical settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement provider or viatical settlement broker is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement provider or viatical settlement broker, or receives any payment or other consideration from the viatical settlement provider or viatical settlement broker for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

*c.* When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

**48.10(11)** An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

**48.10(12)** An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.

**48.10(13)** The name of the viatical settlement provider or viatical settlement broker shall be clearly identified in all advertisements about the viatical settlement provider or viatical settlement broker or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

**48.10(14)** An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement provider or viatical settlement broker, name of a particular division of the viatical settlement provider or viatical settlement broker, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement provider or viatical settlement broker, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement provider or viatical settlement broker, or to create the impression that a company other than the viatical settlement provider or viatical settlement broker would have any responsibility for the financial obligation under a viatical settlement contract.

**48.10(15)** An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

**48.10(16)** An advertisement may state that a viatical settlement provider or viatical settlement broker is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement provider or viatical settlement broker may not be so licensed. The advertisement may ask the audience to consult the viatical settlement provider's or viatical settlement broker's Web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

**48.10(17)** An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

**48.10(18)** The name of the viatical settlement provider or viatical settlement broker shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the viatical settlement provider or viatical settlement broker, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or to deceive as to the true identity of the viatical settlement provider or viatical settlement broker or to create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the viatical settlement provider or viatical settlement broker.

**48.10(19)** An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

- a. Any viatical settlement provider or viatical settlement broker or its business practices or methods of operation;
- b. The merits, desirability or advisability of any viatical settlement contract;
- c. Any viatical settlement contract; or
- d. Any life insurance policy or life insurance company.

**48.10(20)** If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

**48.10(21)** If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the viatical settlement provider or viatical settlement broker during the prior six months.

**48.10(22)** In recommending a viatical settlement contract, viatical settlement brokers and viatical settlement providers shall make suitable recommendations.

**191—48.11(508E) Fraud prevention and control.**

**48.11(1)** *Definition.* “Fraudulent viatical settlement act” includes:

*a.* Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, conspires in the commission of, conspires to commit, or permits its employees or its agents to engage in acts including but not limited to:

(1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

1. An application for the issuance of a viatical settlement contract or insurance policy;
2. The underwriting of a viatical settlement contract or insurance policy;
3. A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
4. Premiums paid on an insurance policy;
5. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
6. The reinstatement or conversion of an insurance policy;
7. The solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy;
8. The issuance of written evidence of a viatical settlement contract or insurance policy; or
9. A financing transaction.

(2) Employing any device, scheme, or artifice to defraud related to viaticated policies.

*b.* Instances in which, in the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits its employees or its agents to:

(1) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a viatical settlement provider or viatical settlement broker or other person engaged in the business of viatical settlement contracts;

(2) Misrepresent or conceal the financial condition of a viatical settlement provider or viatical settlement broker, insurer or other person;

(3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlement contracts; or

(4) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner.

*c.* Embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlement contracts or insurance.

*d.* Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator’s agent intended to defraud the policy’s issuer. “Recklessly” means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

*e.* Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subrule.

**48.11(2)** *Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited.*

*a.* A person shall not commit a fraudulent viatical settlement act.

*b.* A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this rule or investigations of suspected or actual violations of this rule.

*c.* A person in the business of viatical settlement contracts shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlement contracts, unless the person's resident state has granted the person consent to work in the business of insurance, pursuant to 18 U.S.C. Section 1033(e)(2).

**48.11(3)** *Fraud warning required.*

*a.* Viatical settlement contracts and applications for viatical settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”

*b.* The lack of a statement as required in paragraph “*a*” of this subrule does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

**48.11(4)** *Mandatory reporting of fraudulent viatical settlement acts.*

*a.* Any person engaged in the business of viatical settlement contracts having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

*b.* Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

**191—48.12(508E) Penalties; injunctions; civil remedies; cease and desist.**

**48.12(1)** *Unfair trade practices.* A violation of this rule shall be considered an unfair trade practice under Iowa Code chapter 507B and subject to the penalties contained in that chapter.

**48.12(2)** *Unauthorized insurer.* A person doing the activities of a viatical settlement provider or a viatical settlement broker without license under this chapter shall be deemed an unauthorized insurer and shall be subject to the penalties of Iowa Code chapter 507A.

**48.12(3)** *License revocation and denial.* The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

- a.* There was any material misrepresentation in the application for the license;
- b.* The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;
- c.* The viatical settlement provider made unreasonable payments to viators;
- d.* The viatical settlement provider or viatical settlement broker or any officer, partner, member or key management employee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
- e.* The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this rule;
- f.* The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
- g.* The viatical settlement provider or viatical settlement broker no longer meets the requirements of rule 48.3(508E) for initial licensure;
- h.* The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, a financing entity, a special purpose entity, or a related provider trust; or

*i.* The viatical settlement broker or viatical settlement provider or any of its officers, partners, members or key management personnel has violated any provision of Iowa Code chapter 508E or of these rules.

**48.12(4)** If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with 191—Chapters 2 and 3.

**48.12(5)** A viatical settlement provider licensed in this state that fails to file the annual statement referred to in subparagraph 48.3(1)“*a*”(5) and paragraph 48.3(6)“*b*” in the time required shall pay and forfeit an administrative penalty in the sum of \$500 for deposit pursuant to Iowa Code section 505.7. The viatical settlement provider’s right to transact further new business in this state shall immediately cease until the provider has fully complied with this rule.

**48.12(6)** In addition to the penalties and other enforcement provisions of this rule, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.

**48.12(7)** The commissioner may issue, in accordance with 191—Chapters 2 and 3, a cease and desist order upon a person that violates any provision of these rules, any regulation or order adopted by the commissioner or any written agreement entered into with the commissioner.

**48.12(8)** If the commissioner finds that an activity in violation of this rule presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains in effect for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to 191—Chapters 2 and 3.

**191—48.13(508E) Severability.** If any rule or portion of a rule or its applicability to any person or circumstance is held invalid by a court, the remainder of these rules or the rules’ applicability to other persons or circumstances shall not be affected.

These rules are intended to implement Iowa Code chapter 508E.

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